

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1097 Session of  
2015

---

INTRODUCED BY P. DALEY, GODSHALL, McNEILL, COHEN AND MURT,  
MAY 4, 2015

---

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
MAY 4, 2015

---

AN ACT

1 Establishing the Water Well Insurance Board and the Water Well  
2 Insurance Fund; providing for the powers and duties of the  
3 Department of Environmental Protection, for the insurance of  
4 compensation for damages to subscribers who own water wells;  
5 imposing penalties; and making an appropriation.

6 TABLE OF CONTENTS

- 7 Section 1. Short title.
- 8 Section 2. Legislative intent.
- 9 Section 3. Definitions.
- 10 Section 4. The Water Well Insurance Board.
- 11 Section 5. The Water Well Insurance Fund.
- 12 Section 6. Initial source of fund.
- 13 Section 7. State Treasurer as custodian of fund.
- 14 Section 8. Schedule of premiums.
- 15 Section 9. Surplus.
- 16 Section 10. Investment of surplus.
- 17 Section 11. Disbursements from fund.
- 18 Section 12. Application for insurance and approval process.
- 19 Section 13. Subscriber application for additional insurance.

1 Section 14. Automatic inflation protection increase.  
2 Section 15. Audit by Auditor General.  
3 Section 16. Claims against fund.  
4 Section 17. Defenses against claims and civil actions.  
5 Section 18. Subrogation to rights of claimants.  
6 Section 19. Insurance companies to cover this type of risk.  
7 Section 20. Rules and regulations.  
8 Section 21. Department report.  
9 Section 22. Employees of the board.  
10 Section 23. Appropriation.  
11 Section 24. Appeals.  
12 Section 25. Effective date.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. Short title.

16 This act shall be known and may be cited as the Water Well  
17 Insurance Act.

18 Section 2. Legislative intent.

19 The General Assembly finds and declares as follows:

20 (1) The Commonwealth has addressed standards for  
21 drinking water by establishing legislation such as the act of  
22 May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe  
23 Drinking Water Act.

24 (2) The quality and consistency of drinking water is  
25 necessary for community water systems to distribute clean and  
26 safe water to households and businesses.

27 (3) According to the Department of Environmental  
28 Protection, between 13,000 and 15,000 new residential water  
29 wells are drilled in this Commonwealth each year.

30 (4) Many households and businesses that rely on well

1 water have no alternative or water system to provide them  
2 with safe drinking water.

3 (5) The cost of water well construction, maintenance and  
4 treatment of well water can reach beyond reasonable means for  
5 average households.

6 Section 3. Definitions.

7 The following words and phrases when used in this act shall  
8 have the meanings given to them in this section unless the  
9 context clearly indicates otherwise:

10 "Board." The Water Well Insurance Board established by this  
11 act.

12 "Department." The Department of Environmental Protection of  
13 the Commonwealth.

14 "Fund." The Water Well Insurance Fund established by this  
15 act.

16 "Secretary." The Secretary of Environmental Protection of  
17 the Commonwealth.

18 Section 4. The Water Well Insurance Board.

19 The Water Well Insurance Board is established. The board  
20 shall consist of the secretary, as chairman, the Insurance  
21 Commissioner and the State Treasurer.

22 Section 5. The Water Well Insurance Fund.

23 The Water Well Insurance Fund is established in the State  
24 Treasury. The fund shall consist of the premiums paid by owners  
25 of water wells as provided in this act for the purpose of  
26 insuring such owners against the damages resulting from damage,  
27 intrusion or contamination of water wells or well water. The  
28 fund shall be administered by the board without liability on the  
29 part of the Commonwealth, except as otherwise provided in this  
30 act beyond the amount in the fund and shall be applied to the

1 payment of the damages.

2 Section 6. Initial source of fund.

3 The expenses of the initial organization and administration  
4 of the fund shall be paid out of the appropriation to the board  
5 under section 23.

6 Section 7. State Treasurer as custodian of fund.

7 The State Treasurer shall be the custodian of the fund and  
8 all disbursements from the fund shall be paid by the State  
9 Treasurer upon requisition of the board. It shall not be  
10 necessary for the State Treasurer to audit the accounts which  
11 the requisition of the board calls upon the State Treasurer to  
12 pay, and, for making payments without audit, the State Treasurer  
13 shall not be under any liability. The State Treasurer may invest  
14 any portion of the fund not needed for immediate use as other  
15 State funds are lawfully invested. The interest shall be placed  
16 to the credit of the fund.

17 Section 8. Schedule of premiums.

18 (a) Preparation and publication.--At any time during each  
19 year, the board shall prepare and publish a schedule of premiums  
20 or rates of insurance for subscribers, which schedule shall be  
21 printed and distributed free of charge to persons who make  
22 application for the insurance, and any such subscriber may, at  
23 the subscriber's option as provided in this act, pay to the fund  
24 the amount of premium appropriate.

25 (b) Effect of premium payment.--Upon payment of the premium,  
26 the subscriber shall be insured as provided in this act for the  
27 year for which the premium is paid, and the insurance shall  
28 cover all payments that become due for which the premium is  
29 paid.

30 (c) Premiums.--

1           (1) The premium shall be fixed and shall be adequate to  
2 enable payment of all sums which may become due and payable  
3 under the provisions of this act, and an adequate reserve  
4 shall be sufficient to carry all policies and claims to  
5 maturity.

6           (2) In fixing the premiums payable by any subscriber,  
7 the board may:

8           (i) take into account the condition of the well or  
9 wells of the subscriber with respect to the possibility  
10 of damage, intrusion or contamination as shown by the  
11 report of any inspector appointed by the board or by the  
12 department;

13           (ii) periodically change the amount of premiums  
14 payable by any of the subscribers as circumstances may  
15 require and the condition of the well or wells of the  
16 subscribers in respect to the possibility of damage,  
17 intrusion or contamination; or

18           (iii) increase the premiums of any subscriber whose  
19 loss experience warrants such change.

20           (3) The insurance of a subscriber shall not be effective  
21 until the subscriber has paid in full the premium so fixed  
22 and determined.

23 Section 9. Surplus.

24           The board shall set aside 5% of all premiums collected for  
25 the creation of a surplus until the surplus shall amount to  
26 \$200,000, and, thereafter, the board may set apart such  
27 percentage not exceeding 5% as in its discretion the board  
28 determines to be necessary to maintain a surplus sufficiently  
29 large enough to cover the catastrophic hazard of all the  
30 subscribers to the fund and to guarantee the solvency of the

1 fund.

2 Section 10. Investment of surplus.

3 The board may invest any of the surplus or reserve belonging  
4 to the fund in such securities and investments as are authorized  
5 for investment by savings banks. All securities or evidences of  
6 indebtedness shall be placed in the hands of the State  
7 Treasurer, who shall be their custodian. The State Treasurer  
8 shall collect the principal and interest when due and pay the  
9 same into the fund and pay for all securities or evidences of  
10 indebtedness by check issued upon requisition of the board. All  
11 payments shall be made only upon delivery of securities or  
12 evidences of indebtedness to the State Treasurer. To all  
13 requisitions calling upon the State Treasurer to pay for any  
14 securities or evidences of indebtedness, there shall be attached  
15 a certified copy of the resolution of the board authorizing the  
16 investment. The board may, by resolution, sell any of the  
17 securities.

18 Section 11. Disbursements from fund.

19 (a) Administrative expenses.--

20 (1) Money from an appropriation to the board is made  
21 available for the expense of administering the fund,  
22 including the purchase through the Department of General  
23 Services of surety bonds for such officers or employees of  
24 the board as may be required to furnish the board with  
25 supplies, materials, motor vehicles, workers' compensation  
26 insurance covering the officers and employees of the board  
27 and liability insurance covering vehicles operated by the  
28 officers and employees of the board.

29 (2) Money from an appropriation to the board shall also  
30 be available for payment to the Treasury Department of the

1 cost of making disbursements out of the fund on behalf of the  
2 fund at such amounts as the Treasury Department, with the  
3 approval of the Executive Board, shall determine.

4 (b) Options for balance.--The board shall keep an accurate  
5 account of the money paid in premiums by the subscribers and the  
6 disbursements on account of damages to the premises thereof and,  
7 if, at the expiration of any year, there shall be a balance  
8 remaining after:

9 (1) Deducting such disbursements, the unearned premiums  
10 on undetermined risks and the percentage of premiums paid or  
11 payable to create or maintain the surplus provided in this  
12 act.

13 (2) Setting aside an adequate reserve, so much of the  
14 balance as the board may determine to be safely distributable  
15 may either be allocated to the cost of administering the fund  
16 or be distributed among the subscribers in proportion to the  
17 premiums paid by them. The proportionate share of such  
18 subscribers who remain subscribers to the fund shall be  
19 credited to the installment of premiums next due by them. The  
20 proportionate share of subscribers who cease to be  
21 subscribers in the fund shall be refunded to them out of the  
22 fund in the manner provided in this act.

23 (c) Commissions authorized.--Money from an appropriation to  
24 the board shall also be available to pay a one-time commission  
25 as determined by the board to insurance producers who forward  
26 applications for water well insurance to the board under section  
27 12 if a policy is issued pursuant to an application submitted by  
28 an insurance producer. The amount of the commission shall be  
29 determined by the board on an annual basis.

30 Section 12. Application for insurance and approval process.

1 (a) Procedure.--

2 (1) Any owner of a water well who desires to become a  
3 subscriber to the fund for the purpose of insuring the water  
4 well against damages from intrusion or contamination may make  
5 a complete application as prescribed by the board to the  
6 board, its agents or insurance producers.

7 (2) After receipt of a complete application, the board  
8 shall make such investigation as may be necessary, if the  
9 application complies with the rules and regulations of the  
10 board. Within 60 days after the request for an application is  
11 received, the board shall issue a certificate showing the  
12 acceptance of the application and the amount of premium  
13 payable by the applicant for the year for which the premium  
14 is sought.

15 (3) The amount of insurance coverage may not exceed the  
16 replacement cost of the insured well or the maximum amount of  
17 coverage established by the fund, whichever is less.

18 (4) Policies may be issued for one year, two years or  
19 three years as the board may establish.

20 (5) Except as provided in subsection (b), no insurance  
21 shall become effective until the premiums have been paid. All  
22 premiums shall be payable to the State Treasurer, who shall  
23 issue a receipt acknowledging payment. The receipt for  
24 premium together with a certificate of the board shall be  
25 evidence that the applicant has become a subscriber to the  
26 fund and is insured.

27 (b) Terms of insurance.--

28 (1) If the board fails to make the necessary  
29 investigations or inspection and fails to approve or deny an  
30 application for insurance within 60 days of receipt of the

1 written request for an application by the board or any of its  
2 agents, in accordance with this section, the insurance  
3 requested by the applicant shall be deemed granted.

4 (2) The insurance shall be effective from the date the  
5 written request for an application was received by the board  
6 or any of its agents, but the coverage will be null and void  
7 if the applicant fails to remit the premium payment within 20  
8 days from the day the bill for the premium was postmarked.

9 (3) The insurance may be subjected to later reductions,  
10 and premiums adjusted accordingly, if the board determines  
11 that the amount of insurance coverage requested is in excess  
12 of the current replacement cost of the well or the maximum  
13 amount of coverage established by the fund, whichever is  
14 less.

15 (4) The insurance shall be void if, upon inspection of  
16 the well or wells, the board determines that:

17 (i) intrusion damage or water contamination occurred  
18 prior to the request by the applicant for insurance; or

19 (ii) the applicant by unreasonable action or  
20 inaction is responsible for the failure of the board to  
21 inspect the well or wells within 60 days of receipt of  
22 the written request for the application in accordance  
23 with this section.

24 (c) Penalty.--A person who violates this act commits a  
25 misdemeanor of the third degree and shall, upon conviction, be  
26 sentenced to pay a fine of not more than \$1,000 or to  
27 imprisonment for not more than 90 days, or both.

28 Section 13. Subscriber application for additional insurance.

29 (a) Procedure.--

30 (1) Additions in the amount of insurance, up to the

1 allowable limits, may be made at any time by the subscriber  
2 by submitting a written statement to the board or to any of  
3 its agents, except during a period when a claim filed by the  
4 subscriber is open and pending investigation by the  
5 department.

6 (2) Upon receipt of the subscriber's written statement  
7 by the board or any of its agents, the board shall, within 60  
8 days from the day the request was received, reinspect the  
9 well.

10 (3) If reinspection occurs within the 60-day period and  
11 the well passes the reinspection, the new amount of insurance  
12 shall be effective from the date of premium payment after  
13 reinspection.

14 (4) If reinspection does not occur within the 60-day  
15 period, the new amount of insurance shall be effective from  
16 the date the subscriber's written request for additional  
17 insurance was received by the board or any of its agents, but  
18 the additional coverage will be null and void if the  
19 applicant fails to remit the premium payment within 20 days  
20 from the day the bill for additional premium is postmarked.

21 (b) Modification of additional insurance.--The additional  
22 insurance may be subjected to later reductions, and premiums  
23 adjusted accordingly, if the board determines that the added  
24 insurance raises the total amount of insurance in excess of the  
25 current replacement cost of the well or the maximum amount of  
26 coverage established by the fund, whichever is less.

27 (c) Conditions that void additional insurance.--The  
28 additional insurance shall be void if, upon reinspection of the  
29 well, the board determines that either:

30 (1) intrusion damage or water contamination occurred

1 prior to the request of the subscriber for additional  
2 insurance; or

3 (2) the subscriber's unreasonable action or inaction is  
4 responsible for the board's failure to reinspect the insured  
5 well within 60 days of receipt of the written request for an  
6 increase in the amount of coverage by the board or any of its  
7 agents.

8 Section 14. Automatic inflation protection increase.

9 The board shall make available to all subscribers an annual  
10 inflation protection option on the anniversary date of each  
11 policy to uniformly increase subscribers' coverage and shall  
12 allow 30 days for subscribers to elect the option. In any case,  
13 the option shall not be made available more than once annually.  
14 An inflation protection increase shall not be subject to a  
15 reinspection of the well.

16 Section 15. Audit by Auditor General.

17 (a) General rule.--The Auditor General, through such agents  
18 as the Auditor General may select, shall, at least once each  
19 year, make a complete examination and audit of the fund,  
20 including all receipts and expenditures, cash on hand and  
21 securities, investments or property held representing cash or  
22 cash disbursements. For these purposes, the Auditor General may  
23 employ such consultants, experts, accountants or investigators  
24 as the Auditor General may deem advisable.

25 (b) Payment.--The expense incurred in making the examination  
26 and audit shall be certified to the fund by the Auditor General  
27 and shall be paid from an appropriation to the board.

28 (c) First audit period.--The first audit of the fund may, in  
29 the discretion of the Auditor General, extend back to the  
30 creation of the fund or to any other period.

1 Section 16. Claims against fund.

2 Any subscriber to the fund must file with the board a true  
3 statement of claim for any damage, intrusion or contamination  
4 and shall give to the board an opportunity to investigate and to  
5 determine whether the board will pay the claim.

6 Section 17. Defenses against claims and civil actions.

7 In every case where a claim is made against the fund, the  
8 fund shall be entitled to every defense against the claim under  
9 the policy and shall be subrogated to every right of the  
10 subscriber arising out of accidents against any third persons.  
11 The fund may, in the name of the fund, commence a civil action  
12 or be subject to a civil action to enforce any right given  
13 against or to any subscriber or other persons under this act.

14 Section 18. Subrogation to rights of claimants.

15 Nothing in this act shall be construed to relieve any person,  
16 partnership or corporation otherwise liable from any liability  
17 for damages sustained. The fund shall be subrogated to the  
18 rights of any property owners' insurance provided by this act.

19 Section 19. Insurance companies to cover this type of risk.

20 An insurance company may issue policies covering this type of  
21 risk subject to the prior approval of the Insurance Commissioner  
22 as to policy form and rates.

23 Section 20. Rules and regulations.

24 The board may make such rules and regulations and such other  
25 conditions of the policies as it deems just and expedient in  
26 keeping with the fulfillment of the purposes of this act,  
27 including reasonable classification of risks eligible for  
28 coverage, limits of coverage and rules covering the adjustment  
29 and settlement of claims.

30 Section 21. Department report.

1       The department shall make an annual report on the program and  
2 on experience with water well insurance sales through producers  
3 to the Chief Clerk of the Senate and the Chief Clerk of the  
4 House of Representatives.

5 Section 22. Employees of the board.

6       All employees of the board shall be employed by and located  
7 in the department and shall be subject to the administrative  
8 jurisdiction and authority of the secretary.

9 Section 23. Appropriation.

10       The sum of \$1,000,000, or as much thereof as may be  
11 necessary, is hereby appropriated to the board for the purposes  
12 of this act, expenses of organization and administration of the  
13 fund as is provided by this act.

14 Section 24. Appeals.

15       Any party aggrieved by an action of the board shall have the  
16 right to appeal to the Environmental Hearing Board.

17 Section 25. Effective date.

18       This act shall take effect in 60 days.